

# MINUTES OF THE TYNGSBOROUGH CONSERVATION COMMISSION MEETING

**December 13, 2005**

## **Present**

HJ: Henry Jungmann, Chairperson    FZ: Frank Zarba    LC: Lori Capone, Director  
RS: Robert Sherburne, Vice Chair    LG: Lucy Gertz  
CH: Cynthia Hanna    JZ: Jeanne Zarba

## **Absent**

JK: Jeff Kablik    GC: Gloria Clancy, Clerk  
BL: Brian Logue, Associate Member

**7:00 Meeting opened** by Henry Jungmann, Chairperson

**7:02 Eric Gardner – 72 Progress Avenue – Notice of Intent:** (Map 13, Parcel 46) (Continued from 10/25/05 & 11/8/05) Proposed construction of a commercial building, bituminous pavement, landscaping, grading and associated utilities within the 100 ft buffer zone. Proposed filling of local jurisdictional wetland. Steven Eriksen of Norse Environmental Services, Inc. represented Eric Gardner, who was also present. Mr. Eriksen explained that LC has indicated that she feels that isolated wetland is larger than delineated and he concurred. The Commission agreed that the isolated wetland should be increased to 1500 s.f. There was discussion regarding the proposed replication area. It was agreed that a qualified wetland scientist would monitor creation, and hydric soils and wetland plants from the isolated wetland would be transplanted to the replication area. HJ asked for abutters. There were none.

**CH: Motion** to set up a 53 G Account of \$2,000 for Engineering Consultant Review and send the plans out to Holmberg and Howe for review.

**LG: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**JZ: Motion** to continue this hearing to January 10, 2006 at 7:15 P.M.

**FZ: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**7:15 Merrimack Landing Realty Trust – 91 & 95 Middlesex Road – Notice of Intent:** (Map 27, Parcel 2, Lot 0 & 1) (Continued from 11/8/05) Construction of twenty-two, eight unit townhouse style condominiums and apartment buildings, a twenty-four foot wide access drive, parking areas, associated grading, subsurface utilities and associated landscaping, a portion of which is located within 100 feet to a resource area and within the 100 year flood plain. LC explained that the applicant has asked for a continuance to address the initial comment letter from Holmberg & Howe.

**JZ: Motion** to continue this hearing to January 10, 2006 at 7:30 P.M.

**LG: 2<sup>nd</sup>.**

**Unanimous 6-0.**

## **Other Business:**

- ❖ **1 Alden Street/7 Alden Street:** LC explained that she visited 7 Alden Street in response to the complaint received from Mr. McCarthy. LC explained that 7 Alden does have cinder blocks in the water but they are not obstructing the flow of the shoreline like Mr. McCarthy was. LC further explained that Mr. McCarthy's new footings are no longer obstructing the flow of the shoreline.

**RS: Motion** to lift the Enforcement Order for 1 Alden Street excluding the payment of fees, as Mr. McCarthy avowed he never received the initial letter requesting that cement block footings be replace with pipes.

**CH: 2<sup>nd</sup>**

**Unanimous 6-0.**

Mr. McCarthy demanded he was being selectively enforced against and proceeded to submit a new complaint regarding an aerator pump at 7 Alden Street affecting the ability to skate in the area. HJ asked LC to investigate the situation.

- ❖ LC explained she received a complaint regarding ATV trespassing on the newly acquired Massapoag Land. HJ stated this issue should be tabled until construction of the Wilson Way Subdivision is completed.
- ❖ LC explained the retention area at the Elementary School has failed, discharging untreated stormwater into the adjacent bordering vegetated wetland. The Commission requested a Notice of Intent be filed with engineered plans for repair/reconstruction of the retention area.

**7:30 Whispering Pines Estates – 39 Lakeview Avenue – Notice of Intent:** (Map 25, Parcel 13, Lot 0) (Continued from 11/8/05) Proposed residential townhouses, roadway, roadway crossing of an intermittent stream, drainage, grading, and associated utilities within the buffer zone. Also, removal of existing septic system, associated grading and construction of a water pump station within the buffer zone. Mr. Cricones updated the Commission on his progress. He has hired a wetland scientist to evaluate past and proposed wetland and wildlife impacts. Mr. Cricones requested permission from the Commission to perform soil testing in the buffer zone for the detention area in response to one of Holmberg & Howes comments. Commission discussed location of work and allowed work with the condition that the lot line shall be staked before commencement, and that Mr. Cricones would utilize an existing logging road to access the area so that no trees would need to be removed. HJ asked for abutter comments. Michael Abbrederis of 33 Lakeview Ave was concerned about the amount of work within the buffer zone. HJ asked Mr. Abbrederis to hold his comments until the next meeting until some of the engineering concerns have been addressed. Emile Lessard of 29 Lakeview Ave. inquired about the discrepancy in how many acres the lot is comprised of and questioned why the abutters were not invited to the ZBA meeting when the project was approved. HJ indicated that those issues were not within the purview of the Commission. Edward French of 53 Lakeview Avenue commented that Mr. Cricones has a history of cutting down trees on other people's property.

**RS: Motion** to continue this hearing to January 10, 2006 at 7:45 P.M.

**FZ: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**7:45 Dennis Page – 28, 32 & 36 Farwell Road – Abbreviated Notice of Resource Area Delineation:** (Map 20 Parcel 53 & Map 19, Parcels 13 & 13A) Verification of the boundary and an intermittent stream bank and associated bordering vegetated wetland.

**JZ: Motion** to waive the reading of the Legal Notice.

**CH: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**FZ: Motion** to waive the reading of the Abutter List.

**RS: 2<sup>nd</sup>.**

**Unanimous 6-0.**

Steven Eriksen of Norse Environmental Services, Inc represented the applicants who were also present. Mr. Eriksen explained the resource areas and changes to the delineation per a site walk with LC. LC commented that she just received the revised plans today at 3:30 and did not have time to review the changes. HJ asked for abutter comments. There were none.

**JZ: Motion** to continue this hearing to January 10, 2006 at 7:50 PM.

**LG: 2<sup>nd</sup>.**

**Unanimous 6-0.**

#### **Other Business:**

❖ Director's Determination for 5 Rello Way. LC explained there is no filing for this lot. The only work that was approved was installation of the detention area. Mr. Connell is requesting permission to moved the house back to the 100-foot buffer zone and clear up to the silt fence line associated with the detention area, approximately 30 feet from the wetland resource area. HJ stated he would allow clearing to within 50 feet of the resource area under the Director's Determination. All agreed.

**JZ: Motion** to approve the Director's Determination allowing clearing to within 50 feet of the bordering vegetated wetland.

**LG: 2<sup>nd</sup>**

**Unanimous**

**7:55 Ann Tinnirella – End of Beech Tree Road:** (Continued from 8/23 & 9/27/05) Conduct a hearing pursuant to an Order of Judgement by the Superior Court, dated May 23, 2005, whereby this matter is remanded to the Conservation Commission for further hearing and determination of the ownership of the affected property. The Commission was in receipt of a request for a continuance until January 10, 2006.

**LG: Motion** to continue this hearing to January 10, 2006 at 7:02 P.M.

**FZ: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**8:00 Linette Rivera – Lot 12 River Bend Road – Notice of Intent:** (Map 20B, Parcel 29, Lot 12) Clear 56' x 12' area for driveway/parking and place 6" or less of pervious crushed stone, clear path to dock area, storage of dock, placement of picnic table and storage container, cut invasive plants, spot treat poison ivy with Ortho Poison Ivy Killer. All work within riverfront area. Some activities located within floodplain.

**FZ: Motion** to waive the reading of the Legal Notice.

**RS: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**JZ: Motion** to waive the reading of the Abutter List.

**CH: 2<sup>nd</sup>.**

**Unanimous 6-0.**

Ms. Rivera explained the project. Ms. Rivera explained that the parking area has decreased slightly from the original plan due to more spot elevations being performed to more accurately delineate the floodplain. HJ suggested the Commission send this project to Holmberg & Howe for review. HJ recommended that a site visit be coordinated with Holmberg & Howe, Ms. Rivera's surveyor, a representative from the Conservation Commission, and the abutters' surveyor to avoid any discrepancies regarding where the floodplain lies within the subject property. HJ asked for abutters. Ms. Pirkle of 5 Riverbend Road asked who the Commission's consultant was. Atty. Jay V. Lee

addressed the Commission representing the DeCarterets, MonLeons, Ms. Pirkle, and the Peridina's all of River Bend Road. Atty. Lee offered to provide the Commission with a plan the abutters had done delineating the floodplain. Atty. Lee also questioned the public notice as it did not mention a request for a waiver. HJ requested LC inquire with Town Counsel. Atty. Lee cited the Zoning Bylaw and questioned if all applicable permits had been applied for. Atty. Lee requested to submit a letter of objection. HJ requested this not be submitted until all parties have met on site. HJ commented that he was against chemical treatment of poison ivy, opting for hand pulling.

**JZ: Motion** to set up a 53 G Account of \$500.00 for Engineering Consultant Review and send the plans out to Holmberg and Howe for review.

**LG: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**FZ: Motion** to continue this hearing to January 10, 2006 at 8:00 P.M.

**JZ: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**8:15(8:20) Gary Constantine - 9 Constantine Drive – Notice of Intent:** (Map 15, Parcel 60)

Construction of a 24' x 30' detached two car garage within the riverfront area and buffer zone.

**CH: Motion** to waive the reading of the Legal Notice.

**JZ: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**FZ: Motion** to waive the reading of the Abutter List.

**RS: 2<sup>nd</sup>.**

**Unanimous 6-0.**

Mr. Constantine presented his plans to the Commission. LC passed out pictures of the area. There was much discussion. HJ asked for abutters. Donald Vallerand of 52 Constantine Drive asked if there was any proposed filling. Mr. Constantine explained there would not be any.

**FZ: Motion** to close the hearing.

**RS: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**LG: Motion** to issue an Order of Conditions per plan dated September 27, 2005 and discussion.

**JZ: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**8:30 Marc Annese – 190 Massapoag Road – Notice of Intent:** (Map 2, Parcel 24) Construction of a single family house with associated amenities and utilities within the buffer zone of Lake Massapoag and within the Petapawag Area of Critical Environmental Concern.

**JZ: Motion** to waive the reading of the Legal Notice.

**LG: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**JZ: Motion** to waive the reading of the Abutter List.

**FZ: 2<sup>nd</sup>.**

**Unanimous 6-0.**

John Noonan represented Marc Annese who was also present. There was much discussion regarding compensation for floodplain impacts and enhancement for wildlife habitat as the project is located within the Petapawag Area of Critical Environmental Concern. LC informed the Commission that DEP has issued a file number but we have not received a response from the Natural Heritage Endangered Species Program. LC recommended the applicant develop a

dewatering plan in case groundwater is encountered when installing the new foundation. HJ asked for abutter comments. There were none.

**FZ: Motion** to continue this hearing to January 10, 2006 at 8:15 PM.

**JZ: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**8:45 Rick Lamarre – 8 Industrial Way – Notice of Intent:** (Map 21, Parcel 2E) After the fact filing for pavement of approximately 2700 sq.ft. within the buffer zone. Also seeking direction concerning storage of containers on the property.

**CH: Motion** to waive the reading of the Legal Notice.

**LG: 2<sup>nd</sup>.**

**Unanimous 6-0.**

**FZ: Motion** to waive the reading of the Abutter List.

**RS: 2<sup>nd</sup>.**

**Unanimous 6-0.**

Atty. Robert Antcil represented the applicant who was also present. Atty. Antcil presented the plan to the Commission. Atty. Antcil explained the history and proposed future use of the site. There was much discussion. LC informed the Commission that we do not have a DEP number yet. HJ asked for abutter comments. There were none. Atty. Antcil requested the Commission write a letter to the Planning Board for their Thursday night meeting with any conditions or restrictions that may be imposed seeing as the hearing can not be closed awaiting the DEP number. The Commission requested LC write a letter allowing the pavement that has been installed to remain. Furthermore, the Commission would entertain allowing the property to be used for container storage provided that any containers with materials in them shall be covered while stored on site.

**FZ: Motion** to continue this hearing. To January 10, 2006 at 8:30 PM.

**CH: 2<sup>nd</sup>.**

**Unanimous 6-0.**

#### **Other Business:**

- ❖ HJ wanted to revisit the situation at the Elementary School. HJ suggested the Commission issue an Enforcement Order to have the School Department submit engineered plans and resolve the issue as soon as possible. HJ felt this would allow the problem to be resolved quicker and simpler. All members agreed.

**JZ: Motion** to issue an Enforcement Order for the Tyngsborough Elementary School to submit an engineered plan to the Commission with regards to the repair/reconstruct the retention area and work to be performed as soon as possible.

**FZ: 2<sup>nd</sup>**

**Unanimous 6-0.**

- ❖ Mr. Michael Tocci appeared before the Commission, represented by Steven Eriksen of Norse Environmental Services, Inc., requesting the Commission lift the Enforcement Orders that have been placed on the property through the years. Mr. Eriksen reviewed the issues involved with each Enforcement Order. There was much discussion. HJ requested a Notice of Intent be submitted for the clean-up work that still needs to be performed. Mr. Tocci and Mr. Eriksen requested the Commission lift the existing Enforcement Orders and issue a new Enforcement Order for any outstanding issues and for the rest of the clean-up work that needs to be performed on a specific timeline with a \$10,000 Surety Bond.

**CH: Motion** to lift the existing seven Enforcement Orders and issue a new Enforcement Order for all outstanding issues upon receipt of a \$10,000 Surety Bond from a Bond Company approved by the Conservation Commission. Said Bond shall be relinquished to the Commission if all necessary clean-up work is not performed to the satisfaction of the Commission by May 31, 2006.

**FZ: 2<sup>nd</sup>**

**Unanimous 6-0.**

- ❖ **FZ: Motion** to approve the minutes of the Conservation Meeting of 11/8/05.

**LG: 2<sup>nd</sup>.**

**Unanimous. 5-0,** (JZ abstained)

- ❖ **JZ: Motion** to approve the minutes of the Forest & Trails Meeting of November 2, 2005

**FZ: 2<sup>nd</sup>.**

**Unanimous 6-0.**

- ❖ Request for a **Certificate of Compliance** for Lot 6 Chestnut Road, DEP File Number 309-450. LC explained this was an old Order of Conditions that never requested a Certificate of Compliance. The project was constructed in substantial compliance with the Order of Conditions.

**FZ: Motion** to issue a Certificate of Compliance for Lot 6 Chestnut Road.

**CH: 2<sup>nd</sup>**

**Unanimous 6-0.**

- ❖ Request for a **Certificate of Compliance** for 270 Pawtucket Boulevard, DEP File Number 309-676. LC explained that a small 5' x 5' addition was added to the plan but it maintains the Commission's 50-foot No Build setback.

**CH: Motion** to issue a Certificate of Compliance for 270 Pawtucket Blvd.

**LG: 2<sup>nd</sup>**

**Unanimous 4-0** (FZ and JZ abstained)

- ❖ Request for a **Partial Certificate of Compliance** for 14 Highland Street, DEP File Number 309-429. LC explained the Order of Conditions is for the roadway which the developer is in the process of generating the as-built plan.

**LG: Motion** to issue a Partial Certificate of Compliance for 14 Highland Street.

**FZ: 2<sup>nd</sup>**

**Unanimous**

- ❖ Request for a **Partial Certificate of Compliance** for 14 Highland Street, DEP File Number 309-430. LC explained the Order of Conditions is for the roadway which the developer is in the process of generating the as-built plan.

**JZ: Motion** to issue a Partial Certificate of Compliance for 14 Highland Street.

**LG: 2<sup>nd</sup>**

**Unanimous**

- ❖ **The members signed DEP forms:** Order of Conditions for 9 Constantine Drive, Certificate of Compliance for Lot 6 Chestnut Road, Certificate of Compliance for 270 Pawtucket Blvd.,

Minutes 12/13/05 continued

Partial Certificate of Compliance for 14 Highland Street, and Partial Certificate of Compliance for 14 Highland Street.

**JZ: Motion** to adjourn.

**LG: 2<sup>nd</sup>.**

**Unanimous. 6-0**

Meeting adjourned at 10:14 P.M.

Respectfully submitted by Lori Capone, Director of Conservation